



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

Mr. Eddy Trevino
Attorney and Counselor at Law
3907 South Sugar Road
Edinburg, Texas 78539

OR2010-14397

Dear Mr. Trevino:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394273.

The City of Donna (the "city"), which you represent, received a request for the employment contracts for a specified city employee and any phone bills for that employee's cellular telephone. You claim that a portion of the requested information is not subject to the Act. We have considered your arguments.

Initially, we note you have not submitted information or made arguments concerning the portion of the request seeking the employment contracts between the city employee and the city. To the extent information responsive to this portion of the request existed on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim that the city employee's cellular telephone bills are not public information subject to the Act because the city does not receive the cellular telephone bill or pay it directly. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

We further note that the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (finding that information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (concluding, among other things, that information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Thus, the mere fact that the city does not possess the information at issue does not take the information outside the scope of the Act. *See id.* Furthermore, this office has found information in a public official's personal e-mail account and home telephone records may be subject to the Act where the public official uses the personal e-mail account and home telephone to conduct public business. *See* ORD 635 at 6-7 (appointment calendar owned by a public official or employee is subject to the Act when it is maintained by another public employee and used for public business).

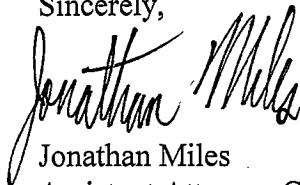
We understand the city does not provide the cellular telephone of the employee at issue. You also inform us that the city does not directly pay or directly reimburse his cellular telephone expenses. However, you further state that the city provides the employee with an allowance for the use of his personal cellular telephone. We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained

by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Thus, to the extent the cellular telephone records maintained by the employee relate to the official business of the city, they are subject to the Act, and as you have not claimed exceptions to disclosure for these records, they must be released. *See id.* §§ 552.301(a), .302. To the extent the employee's cellular telephone records do not relate to the official business of the city, they are not subject to the Act and need not be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 394273

Enc. Submitted documents

c: Requestor
(w/o enclosures)